

**REMARKS**

Restriction to one of the following groups was required under 35 U.S.C. 121 and 372:

- Group I claims 1, 2, 7, 91, 101, 12, and 13, drawn to polynucleotides encoding a red-emitting rail road worm luciferase (SEQ ID NO: 7) and vectors and host cells comprising said polynucleotides.
- Group I claims 1, 2, 7, 91, 101, 12, and 13, drawn to polynucleotides encoding a green-emitting rail road worm luciferase (SEQ ID NO: 16) and vectors and host cells comprising said polynucleotides.
- Group III claims 1, 2, 7, 91, 101, 12, and 13, drawn to polynucleotides encoding a green-emitting *Rhagophthalmus obha* luciferase (SEQ ID NO: 10) and vectors and host cells comprising said polynucleotides.
- Group IV claims 1, 2, 7, 91, 101, 12, and 13, drawn to polynucleotides encoding a orange-emitting *Rhagophthalmus obha* luciferase (SEQ ID NO: 11) and vectors and host cells comprising said polynucleotides.
- Group V claim 3, drawn to methods of enabling expression of a luciferase in mammalian cells.
- Group VI claims 5 and 61, drawn to a luciferase of SEQ ID NO: 4 and variants thereof.
- Group VII claims 7, 9-16, 22, and 23, drawn to a gene construct comprising 2 luciferases which emit light whose wavelength does not substantially depend on a determining condition and cells comprising said construct.
- Group VIII claims 7, 9-16, 22, and 23, drawn to a gene construct comprising 3 luciferases which emit light whose wavelength does not substantially depend on a determining condition and cells comprising said construct.
- Group IX claims 7-23, drawn to a gene construct comprising 4 luciferases which emit light whose wavelength does not substantially depend on a determining condition and cells comprising said construct.
- Group X claim 24, drawn to methods of screening drugs.
- Group XI claims 25-27, drawn to methods of multiply determining transcription activity of multiple promoters before and after a change of culture environment.

**Application No.: 10/555,544**  
**Filing Date: November 4, 2005**

In response to this Restriction Requirement, Applicant elects Group VIII, that is Claims 7-19, 22 and 23.

*Election of Species*

Additionally, if Group VIII was elected, the Examiner has requested election of a single combination of 3 types of promoters.

In response to the election of species requirement, Applicant elects species of a constantly expressed promoter, a toxicity assessing promoter and a promoter subjected to assessment, that is Claim 18, with the understanding that upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. Currently, Claims 7-17 are generic for the elected species.

In view of the foregoing, Applicant respectfully requests that this application be passed to issuance. In any point remains that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 8, 2008

By: 

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AMEND

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